

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

**BAUER'S INTELLIGENT TRANSPORTATION,  
INC.**

**Employer**

**and**

**Case 20-RC-150089**

**TEAMSTERS LOCAL 665**

**Petitioner**

**REGIONAL DIRECTOR'S DECISION ON OBJECTIONS  
AND ORDER CONSOLIDATING CASES FOR HEARING**

Based on a petition filed on April 14, 2015,<sup>1</sup> and pursuant to my September 16 Decision and Direction of Election, Board agents conducted an election on September 30 among the following appropriate unit of employees employed by Bauer's Intelligent Transport, Inc. (Employer) to determine whether they wish to be represented for purposes of collective bargaining by Teamsters Local 665 (Petitioner):

All full-time and regular part-time commuter drivers employed by the Employer out of its San Francisco and Santa Clara County facilities; excluding all other employees, guards, and supervisors as defined by the Act.

The *Tally of Ballots* prepared and served on the parties at the conclusion of the election shows that of approximately 79 eligible voters, 25 votes were cast for and 41 votes were cast against the Petitioner, with one challenged ballot, a number that is insufficient to affect the election result.

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<sup>1</sup> Herein all dates refer to calendar year 2015 unless otherwise noted.

## **THE OBJECTIONS**

On October 7, Petitioner timely filed *Objections to the Conduct of the Election and Conduct Affecting the Results of the Election* (Objections) and timely submitted an offer of proof in support thereof. The Objections read verbatim as follows:

### **Objection No. 1**

On the day of the election, while the polls were open, unit employee Reyna Morales, a vocal anti-Union employee and Company supporter, assaulted unit employee Guillermo Vargas, an outspoken Union supporter, over a statement Vargas made that Morales perceived as impugning her integrity because of her support for the Employer and criticism of the Union. The assault was witnessed by other unit employees, and word of the assault quickly spread among the bargaining unit employees, most of whom had not yet voted in the election. The Employer condoned the assault and ratified Morales' conduct when, after receiving a report of the assault, it dispatched Morales to go to and remain at the facility where the NLRB election was being conducted while the polls remained open, while at the same time sending Vargas home for the day.

### **Objection No. 2**

The Employer on or about September 17, 2015, suspended, and on or about September 22, 2015, terminated unit employee Roy Flugence, a vocal supporter of the Union, in violation of Section 8(a)(1) and (3) of the Act. Word of the suspension and termination of Flugence, recognized as a vocal Union supporter, spread quickly among the bargaining unit employees.

### **Objection No. 3**

On or about September 28, 2015,<sup>2</sup> Gary Bauer addressed a mandatory meeting of unit employees and implicitly warned them if they wanted a union to represent them then they should go to work for one of the Employer's unionized competitors, thus warning employees that they risked their jobs if they voted for representation by the Union.

### **Objection No. 4**

Contrary to the instructions of the NLRB Agent conducting the election at the Santa Clara polling site, Employer election observer Louis Davis repeatedly left the immediate vicinity of the polling station, unaccompanied, while the polls remained open.

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<sup>2</sup> It appears from the investigation that the alleged captive-audience campaign speech might have occurred on September 29, potentially running afoul of the Board's rule set forth in *Peerless Plywood Co.*, 107 NLRB 427 (1953).

I caused an investigation into Petitioner's *Objections*, which disclosed that all four objections raise substantial and material issues of fact that can best be resolved through a hearing. Because these issues are related to unfair labor practice allegations in the *Consolidated Complaint and Notice of Hearing* in Cases 20-CA-160321 & 20-CA-161534 that issued on December 30, and in accordance with Section 102.69(c)(1)(ii) of the Board's Rules, I conclude that the purposes of the Act will best be effectuated by considering them jointly in a single consolidated hearing before an Administrative Law Judge. These *Objections* and the allegations in the *Complaint* shall be considered to the extent that they bear on the validity of the election. *White Plains Lincoln-Mercury, Inc.*, 288 NLRB 1133 (1988).

Accordingly, pursuant to Sections 102.33 and 102.72 of the Board's Rules and Regulations, Series 8, as amended, I HEREBY ORDER the consolidation of Case 20-RC-150089 with Cases 20-CA-160321 & 20-CA-161534 for the purpose of a hearing before an Administrative Law Judge.

I FURTHER ORDER that at the same time and place as the hearing in Cases 20-CA-160321 & 20-CA-161534, currently scheduled for 9:00 a.m. on February 1, 2016, and consecutive days thereafter, in E.V.S. Robbins Courtroom 306 (third floor), 901 Market Street, San Francisco, California, a hearing will be held before a duly designated Administrative Law Judge of the National Labor Relations Board, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony, and to examine and cross-examine witnesses with respect to the issues that I identified above as raising substantial and material issues of fact.

I HEREBY REQUEST that the Administrative Law Judge designated for the purpose of conducting the hearing submit to the Board and serve on the parties a report containing resolution of credibility of witnesses, findings of fact, and recommendations as to the disposition of the *Objections*, and on other conduct bearing on the validity of the election.

DATED AT San Francisco, California this 31<sup>st</sup> day of December, 2015.

*/s/ J.F. Frankl*

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JOSEPH F. FRANKL  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

